IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2648 of 2003

to

FIRST APPEALNo 2668 of 2003

with

CIVIL APPLICATION No 9314 of 2003

to

CIVIL APPLICATION No.9334 of 2003

Date of Decision: 20.12.2003

UNITED INDIA INSURANCE CO.LTD.

Versus

RAVJIBHAI KARSANBHAI RATHOD

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr Justice J.N.Bhatt, Judge

Whether approved for reporting ?

For the Appellants : Shri A.R.Mehta for Mr.Rajni H.Mehta.

PER ; BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. We propose to dispose of this group of 21 appeals (First Appeal Nos.2648 to 2668 of 2003) by this judgment since they arise out of common award and the same accident.

Whether Reporters of Local Papers may be allowed to see the judgment ?

2. The claim petitions arise out of motor accident which occurred on April 15, 2000 with Tanker containing Naphta liquid (highly inflammable material) bearing registration No.GJ-5-V-4845 overturned at about 1.15 a.m. near Vakatana village. Naphta started spilling on the road and caught fire and resulted in fatal injuries to 15 persons and grievous injuries to others. Claims are at the instance of either heirs of deceased or those sufferrd personal injuries. Ashokkumar Vijaykumar Yadav (driver) was deleted while owner of vehicle did not file written statement nor examined witnesses nor contested the claim. The appellant filed application under section 170 of the Motor Vehicles Act, 1988 (Act) for permission to contest the claim on merits. However, this application was rejected.

3. The appellant opposed the claims on the ground that the accident was not caused due to the use of the motor vehicle; it was caused due to fire to Naphta by lighting of match-stick and the injuries suffered by the injured/deceased cannot be construed having been caused by use of motor vehicle. Further, the claimants were not covered by the policy in question. Therefore, the appellant is not liable to satisfy the award. On the pleadings of the parties, Claims Tribunal framed four issues. Parties led evidence thereon. Ultimately, Claims Tribunal came to the conclusion that the accident took place as alleged, therefore, the claimants were entitled to compensation awarded in respective cases with interest at the rate of 9 per cent from the date of application till realisation.

4. Being aggrieved by and dissatisfied with the award, the appellant challenges the same through these appeals. The first submission advanced by Shri A.R.Mehta, learned counsel for the appellant is that the Claims Tribunal rejected the application of the appellant under section 170 of the Act erroneously. Precisely, submission is that when the insured had not filed written statement nor examined witnesses and contested the claim, case of collusion between the claimants and the insured was made out, therefore, the Claims Tribunal ought to have allowed the application. Shri Mehta in support of this submission places reliance on a decision of the Apex court in National Insurance Co. Ltd., Chandigarh v. Nicolletta Rohtagi and others, (2002) 7 SCC 456. In para 31 of the judgment, the Apex Court held that :

"31. We have already held that unless the conditions precedent specified in Section 170 of the 1988 Act are satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further the Tribunal does not implead the insurance company to contest the claim, in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and insurer is allowed to contest the claim on merits, in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected, the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-section (2) of section 149 of the 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award. (emphasise supplied).

Therefore, Shri Mehta proceeds to submit that on merits, the awards are liable to be set aside. Making reference to the accident, it is forcefully contended that the accident did not arise out of use of motor vehicle. The tanker turned turtle and was stationary when the accident took place to Naphta at the lighting of match-stick by the deceased/claimants who gathered at the site for taking away the liquid assuming it to be kerosene. Reference is made to first information report, the statement of Fire Officer and by some of the deceased in dying declarations that someone lit match stick at the site. We are not satisfied with these submissions. There is no dispute that tanker carrying Naphta was met with accident, turned turtle resulting in leakage of Naphta liquid. Simply because the vehicle became stationary on account of accident having turned turtle, it cannot be said that the accident did not arise out of use of motor vehicle. The expression "arising out of the use of motor vehicles" has to be given broader meaning

and, therefore, simply because the vehicle happens to be stationary at the time when the accident took place, but the dominant purpose of the journey was use thereof for carrying Naphta liquid. There is direct nexus between the injuries suffered by the deceased/injured and the accident (see Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777). Another facet of the question is whether the deceased/injured were negligent/responsible for causing the accident by lighting match-stick. Frankly speaking, we are not satisfied with the evidence sought to be pleaded by the appellant in support of its contention that the deceased/injured were responsible for the fire having lit the match-stick. Evidence in criminal case is not relevant to prove cases under the Motor Vehicles Act, 1988. Even otherwise, maker of First Information Report has not been produced to prove the contents thereof nor the person who recorded the same. Further, the best persons to throw light how accident actually took place was the driver and conductor of the vehicle. Neither the driver nor conductor of the vehicle has been produced to establish that the deceased/injured caused the accident by lighting match-stick. Therefore, we find no difficulty in accepting the version of the claimants that fire accident took place in which some died and others suffered grievous injuries. There is no dispute about it. Assuming that there is no evidence how it took place, principle of res ipsa loquitur applies in such a case. Therefore, from both angles, taking place of accident is proved. With regard to responsibility, obviously, the tanker was carrying Naphta, highly inflammable material, therefore, high degree of care and caution was required from the owner/driver of the vehicle and it should not have been driven in a way that it turned turtle. The driver should have foreseen that going to side may cause accident and which could result in serious consequences because he was carrying highly inflammable material in the vehicle. These facts are enough to demonstrate that the driver and the conductor of the vehicle were thoroughly negligent in driving the vehicle.

5. Shri Mehta submitted that the deceased/injured should not have come to the site and taken away the material from the site. Therefore, they have also contributed to some extent in case this court come to the conclusion that there is negligence on the part of the driver and the conductor of the vehicle. We do not accept this submission. Villagers came to the site since accident had taken place. Had there been no such material in the vehicle and occupants of the vehicle had been trapped in the accident, the villagers were there to

undertake rescue operations. Before coming to the site, they never thought of taking away the material. Their purpose may be to undertake rescue operations. When material is lying afloat, they must have thought of taking away something which had become useless since it was lying on the road. How the fire took place has not been established by the appellant, but it has taken place resulting in death of some and injuries to others.

6. Shri Mehta contended that the compensation awarded by the Claims Tribunal is excessive, therefore it deserves to be reduced. With the assistance of the learned counsel, we considered each of these cases and we find that compensation is not at all excessive. We do not record that the compensation is just compensation since the claimants may file appeal for enhancement in compensation. However, for disposing of these appeals, we hold that the contention that the awards are excessive is not tenable. Therefore, rejected.

7. No other point was urged. The result is that there is no merit in these appeals and the same are dismissed.

8. The amount deposited in this Court be transmitted to the Claims Tribunal by the Registry for disbursing to the claimants.

9. In view of the orders in the appeals, no order in the Civil Applications.

(Bhawani Singh)
Chief Justice

(J.N.Bhatt)
Judge
(vjn)